

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

<b>SHIRLEEN RODRIGUEZ MERCADO</b>	:	<b>Civil No. 1:21-CV-365</b>
	:	
<b>Plaintiff</b>	:	<b>(Magistrate Judge Carlson)</b>
	:	
<b>v.</b>	:	
	:	
<b>KILOLO KIJAKAZI,</b>	:	
<b>Acting Commissioner of Social Security<sup>1</sup>,</b>	:	
	:	
<b>Defendant</b>	:	

**MEMORANDUM AND ORDER**

On July 18, 2018, the plaintiff, Shirleen Rodriguez Mercado, filed the instant claim for disability and supplemental security insurance benefits, citing an array of physical and mental impairments, including depression, anxiety, bipolar, fibromyalgia, schizoaffective disorder, scoliosis, GERD, and rosacea. (Tr. 328).

After a thorough review of the administrative record, we noted what appears to be a potential error in the decision of the ALJ, but one which neither party specifically brought to the Court’s attention in its brief. Between Steps 4 and 5 of the sequential analysis that governs social security cases, the ALJ noted that, “the

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<sup>1</sup> Kilolo Kijakazi became the Acting Commissioner of Social Security on July 9, 2021. Accordingly, pursuant to Rule 25(d) of the Federal Rules of Civil Procedure and 42 U.S.C. § 405(g) Kilolo Kijakazi is substituted for Andrew Saul as the defendant in this suit.

claimant has at least a high school education and is able to communicate in English.” (Tr. 30). However, the record seems to clearly demonstrate that Ms. Mercado is not able to communicate in English. For example, Mercado’s disability application notes she is not able to speak and understand English, (Tr. 327), she received communications from the Social Security Administration in Spanish, (Tr. 7-8, 12, 16-18, 95-97, 117-118, 145-47, 152-53, 156-59, 164, 166-67, 174-80, 202-03), her hearing was conducted using a Spanish interpreter, (Tr. 41, 69, 144), and numerous notations in Mercado’s medical records indicate that her preferred language is Spanish, (Tr. 505, 527, 663), and that her son accompanied her to her appointments to translate or an interpreter was provided. (Tr. 485, 492, 521, 573, 583, 602, 627, 628, 651, 738, 751, 758, 785, 793, 827, 872, 881, 921, 928, 932).

As no party has briefed the Court on this issue, and this is the only mention of Mercado’s language ability in the ALJ’s opinion, it is unclear whether and to what extent this apparent error on the part of the ALJ affected Mercado’s disability determination, including whether the ALJ considered Mercado’s inability to communicate in English in his RFC analysis. Having discovered a potential error in the ALJ opinion, but without enough information as to whether this error is harmless or should trigger a remand under the standards we employ when assessing social security appeals, we hereby order the parties to submit supplemental briefs to this Court addressing the ALJ’s statement that Mercado is able to communicate in

English, despite the record clearly showing she cannot, within 14 days of this order. Alternately, should the Commissioner wish to voluntarily remand this case due to this error, he shall submit a motion requesting the same within 14 days of this order.

THEREFORE, IT IS HEREBY ORDERED THAT, on or before **Tuesday, September 14, 2022**, the parties shall file supplemental briefs addressing the error in the ALJ's opinion. Alternately, should the Commissioner decide to voluntarily remand this case, it shall file a motion to voluntarily remand on or before **Tuesday, September 14, 2022**.

So Ordered this 30th day of August 2022.

/s/ Martin C. Carlson  
Martin C. Carlson  
United States Magistrate Judge